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SURYA DAT v. JAMNA DAT.

It is argued before us on behalf of Jamna Dat that as he was in joint possession before the partition suit so the parties should be placed in joint possession now. It is obvious that this cannot be done. He has given up his joint possession and taken exclusive possession of the part of the house which was given to him under the decree. Under the final decision of the case he is no longer entitled either to joint possession of the whole or to the exclusive possession of a part. He has no title whatsoever, and we think it is the duty of the court to place the decree-holder in exclusive possession of the lower part of the house and to remove Jamna Dat therefrom. We, therefore, allow the appeal and set aside the order of the court below. We remand the case to the lower court with directions to re-admit it and to proceed to place the appellant Surya Dat in possession of the lower part of the house by removing therefrom the respondent Jamna Dat. The appellant will have his costs in both courts.

Appeal allowed and cause remanded.

Before Mr. Justice Tudball and Mr. Justice Sulaiman.

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May, 6.

BHAGWAN DAS AND ANOTHER (DECREE-HOLDERS) *v.* JUGUL KISHORE (OBJECTOR).*

Civil Procedure Code (1908), *section* 50; *order XXII, rule* 12—*Execution of decree—Attachment—Death of judgment-debtor—Effect of death on the execution proceedings.*

Where after an attachment of the judgment-debtor's property in execution of a decree the judgment-debtor dies, the decree-holder is not bound, on peril of his application abating, to bring upon the record the legal representative of the respondent. So long as execution of the decree is not barred by limitation, he can execute it against the legal representative of the deceased judgment-debtor. On the other hand, there is no bar to the decree-holder, if so advised, applying to have the legal representative made a party to the execution proceedings. *Sheo Prasad* v. *Hira Lal* (1) and *Gulabdas* v. *Lakshman Narhar* ( ) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Babu *Piari Lal Banerji*, for the appellants.

Mr. *S. A. Haidar*, for the respondent.

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* First Appeal No. 271 of 1919, from a decree of Khwaja Abdul Ali, Subordinate Judge of Budaun, dated the 7th of May, 1919.

(1) (1889) I. L. R., 12 All., 440. (2) (1879) I. L. R., 3 Bom., 221.

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BHAGWAN DAS v. JUGUL KISHORE.

TUDBALL and SULAIMAN, JJ.:—In this case a decree for money was obtained by the decree-holder on the 23rd of March, 1915, against one Shib Charan Lal only. On the 13th of September, 1918, certain property was attached in execution of the decree. On the 27th of November, 1918, the judgment-debtor filed certain objections, and his father also filed certain objections, claiming that a part of the property attached belonged to him and not to his son. Before these objections could be decided, both the father and the judgment-debtor died and on the 9th of April, 1919, the decree-holder applied to the court to have the names of the four sons of Shib Charan Lal brought upon the record as his representatives and to be allowed to continue the proceedings against them. An *ex parte* order was passed entering their names upon the record as the legal representatives and notices were issued. As two of them were minors those notices were issued to the minors and to Jugul Kishore, the eldest son, to show cause why the latter should not be appointed guardian on behalf of the minors. On the 29th of April, 1919, Jugul Kishore filed certain objections, among them being one that according to law the names of the heirs of Shib Charan Lal, deceased, could not be substituted in the execution department and the application for substitution of the names of the heirs was wrong and should be rejected. The court below went solely into this one point. It held that by reason of order XXII, rule 12, the judgment-debtor Shib Charan Lal having died, the execution proceedings abated, because the names of the heirs could not be brought upon the record in view of the fact that rules 3 and 4 of order XXII did not apply to execution proceedings. It has directed the decree-holder to file a separate and a fresh application for execution as against the heirs under section 50 of the Code of Civil Procedure. The decree-holder has appealed. It is urged that the court below has taken a wrong view of the law and of the meaning of rule 12 of order XXII. Rule 12 of order XXII was enacted in order to show clearly and distinctly that rules 3, 4 and 8 of that order did not apply to execution proceedings. We are not concerned with rule 8 in this case but with rule 4 only. That rule makes it compulsory, where a sole defendant dies and the right to sue does

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survive, for the court on an application made in that behalf to bring the legal representative of the deceased person upon the record, make him a party to the suit and proceed to hear it. Clause (3) of that rule shows clearly that where within the time limited by law no application is made under sub-rule (1) the suit shall abate as against the deceased defendant. Rule 12 distinctly shows that this rule shall not apply to execution proceedings, *i. e.*, that it is not compulsory upon a decree-holder to have the names of the heirs brought upon the record in that way, on penalty of his decree abating. It is open to him to apply under section 50 of the Act for execution of his decree as against the heirs. But there is nothing in the Code of Civil Procedure which lays it down that a court cannot bring the heirs of a judgment-debtor upon the record in execution proceedings and continue with them, nor is there anything in the law which lays it down that on the death of the judgment-debtor any pending execution proceeding shall abate. In the case of *Sheo Prasad* v. *Hira Lal* (1), after the attachment of property, the judgment debtor, as in the present case, died. No steps were taken by the decree-holder to have the heirs brought upon the record. The execution proceedings continued and the property was sold. A Full Bench of this Court held that such a sale was regular and valid, notwithstanding such an omission, and that an attachment would not abate on the death of the judgment-debtor and his death would not render it necessary for the decree-holder to take any steps to keep in force the attachment of the property made in the judgment-debtor's life-time. They differentiated between the cases of judgment-debtors dying before attachment and after attachment; Mr. Justice MAHMUD differed. He held that it was an irregularity for a decree-holder not to have brought the heirs of the deceased judgment-debtor upon the record. It is nowhere held that execution proceedings must abate on the death of the judgment-debtor. If the decision of the court below be correct, then, on the abatement of these proceedings, the attachment would cease and it would be open to the heirs to dispose of the property before it could be re attached under a fresh execution proceeding. The

(1) (1889) I. L. R., 12 All., 440.

Full Bench referred with approval to the case of *Gulabdas* v. *Lakshman Narhar* (1). That was a case where the heir of the judgment-creditor applied to continue execution proceedings commenced by his predecessor. He applied after sixty days which was the period of time laid down by the law for such an application in the course of a suit. The Bombay High Court held that the provisions relating to suits did not apply to execution proceedings and that it was open to the judgment-creditor's representative to continue the proceedings of his predecessors at any time within the period of limitation laid down by the general article 179 of the then Limitation Act. It did not seem to be then thought that it was impossible for the judgment-creditor's representatives to continue the previous proceedings. We see nothing in law which forbids a court to allow execution proceedings to continue against the heirs of a deceased judgment-debtor. It is true that the decree-holder cannot be forced to come into court and continue under the provisions of rules 3 and 4 of order XXII, because those rules do not apply to execution proceedings, but there is nothing in the law to prevent him from so applying. In our opinion the execution proceedings did not abate on the death of Shib Charan Lal, and it was open to the judgment-creditors to continue those proceedings, and there was nothing in law to prevent him giving notices to the heirs and bringing them on the record. As the court below decided the application on this one point only, we allow the appeal, set aside that order and return the record to the court below with directions to proceed to hear and decide all other objections that have been raised according to law. We would point out that the objections filed by the deceased father of the original judgment-debtor have not yet been determined, and as the deceased judgment-debtor's sons appear to be the representatives of the deceased grandfather as well, it will be open to them to press their objections in their capacity as legal representatives of their grandfather. The appellant will have the costs of this appeal.

Appeal allowed and cause remanded.

(1) (1879) I. L. R., 3 Bom., 221